

Appl No.: 10/084,688

Atty. Dkt.
UCF-293**REMARKS/ARGUMENTS**

Favorable consideration of this application is respectfully requested. Applicant has rewritten claims 1, 15, 17, 20, 22, 24, 27, 29, and 31 and canceled claims 16, 18, 19, 23, 25, 26, 30, 32 and 33. Favorable reconsideration of this application is, solicited.

Applicant gratefully appreciates the telephone consultation with the Examiner on July 26, and August 23, 2004. Applicant agrees with the content of the interviews that is referenced in the interview summary dated July 26 that was prepared by the examiner.

Applicant has amended the independent claims 1, 20 and 27 to specify the "overlapping portion(s)", respectively, to cover the embodiments described in the specification. Independent claim 1 has been amended to include the novel subject matter of dependent claims 18 and 19. Independent claim 20 has been amended to include the novel subject matter of dependent claims 25-26 and independent claim 27 has been amended to include the novel subject matter of dependent claims 32-33.

Applicant notes that amending the independent claims to include a "thickness" was suggested to and agreed upon between applicant's attorney and the examiner in the July 26, 2004 interview, and that this phrase does not raise new matter or new considerations or new issues, since the specification describes this feature.

As to dependent claims 16, 17, 23, 24, 30, 31, applicant has canceled claims 16, 23 and 30, and has amended claims 17, 24 and 31 to depend upon claims limited to "platinum" and "tungsten" strips, and to further eliminate any range values not supported by the specification. Claims 17, 24, and 31 DO NOT CONTAIN ANY NEW MATTER and instead recite features that are clearly supported by the subject specification.

Claims 1, 3, 15-17, 20-24 and 27-31 were rejected under sec. 112, second paragraph. This rejection is now moot since claims 18-19 have been incorporated into independent claim 1, claims 25-26 have been incorporated into independent claim 20 and claims 32-33 have been incorporated into independent claim 27.

Claims 15-18, 20-33 were rejected under sec. 112, second paragraph as being indefinite. The claims have been accordingly amended to overcome the rejection.

As to the objection to the drawings, a corrected REPLACEMENT drawing of Fig. 4 labeled as "(PRIOR ART)" is being submitted with this response.

Claims 15-17, 22-24, 26, 29-31 and 32 were rejected under sec. 112, first paragraph as containing subject matter now claimed that is not supported by the original specification. Applicant respectfully disagrees. The originally filed specification on at least page 1, lines 4-5, 16, page 2, lines 18, 29-33, page 3, lines 2-4, page 4, lines 20-23, page 10, lines 11-14 clearly define the "junction" being used for "sensing temperature." Thus, removal of this rejection is respectfully requested.

Claim 1 was rejected under sec. 102b as anticipated by Nishioka. This rejection is now moot since claim 1 has been amended to include the subject matter of claims 18-19.

Claims 19-19, 20, 25-27 and 32-33 were rejected under sec. 103 as being unpatentable and obvious over Nishioka. As admitted by the PTO dependent claims 18-19, 25-26 and 32-33 are clearly not described in this reference. Applicant disagrees with the characterization that such features of these claims are merely obvious. There is no teaching, suggestion or description in the Nishioka reference for these claimed dimension features in these claims. Thus, removal of this reference is respectfully requested.

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If this rejection is repeated, applicant requests the Examiner point out which currently undisclosed references describe, teach, and suggest the claimed features of these claims. Under the Patent Rules, an examiner must rely on references to reject claims and not personal feelings, and must include cited references to support the rejection. For at least these reasons, removal of this rejection is respectfully requested.

Applicant notes that the Examiner has verbally agreed that the subject claims include features clearly not described, taught, or suggested by the Nishioka reference.

Any rejection solely relying on the Nishioka reference is no more than an "obvious to try" rejection. Arguably, it might be "obvious to try" various "thicknesses" and "cross-sectional areas" and forming a "ball-shaped portion" and forming a "point shaped configuration portion." However, Examiner is well aware that "obvious to try" is not the standard for determining inventiveness. See also *In re Kaplan*, 789 F. 2d at 1580, 229 U.S.P.Q. at 683, where the court held: "In effect, what the Board did was to use a disclosure of appellants' own joint invention which had been incorporated in the Kaplan sole disclosure to show that their invention was but an obvious variation of Kaplan's claimed invention. That amounts to using an applicant's invention disclosure, which is not a 1-year time bar, as prior art against him. That is impermissible."

Claims 3, 15-17, 21-24 and 29-31 were rejected under sec. 103 as being unpatentable over Nishioka in view of Tombrello and Tao. For the reasons presented above, these references clearly do not overcome the deficiencies to the Nishioka reference. Thus, removal of this rejection is requested.

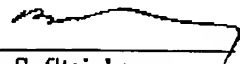
Applicant contends the references cannot be modified to incorporate the features of subject claims 1, 3 and 15-17, 20-24, 27-31 and 33 without utilizing Applicant's disclosure. The courts have consistently held that obviousness cannot be established by combining the teachings of the prior art to Applicant to produce the claimed invention, absent some teaching, suggestion, incentive or motivation supporting the combination.

In view of the foregoing considerations, it is respectfully urged that the subject amendment be entered and claims 1, 3, 15, 17, 20-22, 24, 27-29, 31 and 33 be allowed.

Alternatively, applicant requests the subject amendment be entered and a nonfinal office action be provided since the previous final rejection was clearly premature. For example, the examiner brought up new issues that were not earlier presented. For example, the drawing objection was not raised in the previous office action, and the rejection of claims 18-19, 25-26 and 32-33 are not supported by any references of record.

Such action is respectfully requested. If the Examiner believes that an interview would be helpful, the Examiner is requested to contact the attorney at the below listed number.

Respectfully Submitted;


Brian S. Steinberger
Registration No. 36,423
101 Brevard Avenue
Cocoa, Florida 32922
Telephone: (321) 633-5080Date 8/23/04